

261102

Gray Rider Truck Lines, Inc.

P.O. Box 17415 * Pensacola, FL 32522 * 251-946-3030

November 24, 2003

FMCSA-2003 16339-3

Chief Safety Officer
Federal Motor Carrier Safety Administration
400 7th Street, S.W., Room 8302A
Washington, DC 20590

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RECEIVED

Re: Decision of Petition of Request for Safety Rating Change pursuant to 49 CFR 385.17

Dear FMCSA Chief Safety Officer:

After having spoken with Judy Rutledge regarding the Decision on Denial for Review of Safety Rating last week, for Gray Rider Truck Lines, Inc. (USDOT# 280357), I would like to request that the agency give further consideration to the issue and provide a clarification regarding their decision.

Gray Rider Truck Lines, Inc. (GRTL) has outlined the corrective actions that it has taken in previous correspondence submitted to FMCSA, and feels it is doing everything possible to prove that it has implemented programs to address the deficiencies cited on their most recent compliance review dated June 11, 2003.

GRTL began to implement corrective action immediately following the review, and submitted a request for safety rating change based on the corrective action on August 18, 2003. The carrier's safety rating denial has been based on their performance based evaluation made during the period May 20 – August 25, 2003, the overwhelming portion of which was before the carrier claimed that it had programs in place to deal with the cited violation (August 18, 2003). While the carrier understands that the FMCSA may use various performance measures to decide if a rating upgrade is warranted, it feels that the use of information that would not have impacted the safety rating during the compliance review as a reason to deny the rating upgrade subsequent to the review places them in a situation where they are being held to a higher standard than their peers.

GRTL does not suggest to the FMCSA that they are in perfect compliance with the hours of service requirements. They have to deal with imperfect drivers on a day-to-day basis. The company has discovered log violations during their log audit procedures, but had minimized the number of violations to a level that they were no longer had a critical violation pattern of the logging rules. Since the initial safety rating upgrade request was made, the carrier's violation rates have remained under 10% for violations of the 10, 15, 70-hour and falsification standards. The drivers for GRTL are all fully aware of the carrier's policy regarding logbook violations. The carrier notes that though it has received a single "hours of service" violation write up since the request for the safety rating upgrade went out, that they fired the driver immediately for the violation. Though the agency has mentioned that it "doubts the efficacy" of the carrier's corrective action program, the

carrier does not see how taking such abrupt action can indicate anything other than their commitment to hours of service compliance.

The carrier has provided, with this letter, a recap printed from the DOT / VOLPE website on 11/17/2003, which shows that the carrier has only had a single driver out-of-service violation since the date the rating upgrade was submitted. The inspection was on driver James Murphy (in FL on 8/25/2003). The driver knew that the company would lay him off dispatch for the violation cited, so he did not turn the inspection in to them. The company discovered this to be the case, and fired him on the spot. This was the only driver out of service violation cited for the 16 inspections completed since the rating upgrade request was filed. The carrier feels that this should further indicate to the FMCSA that the hours of service compliance program put into place is effective.

GRTL requests that the FMCSA give further consideration to this matter and that it provide further clarification regarding their denial should they not be convinced regarding the effectiveness of the carrier's compliance programs. The carrier is requesting this from the agency in hopes to settle this matter without having to move forward to the U.S. Court of Appeals, as has been advised by their counsel.

GRTL certifies that it currently meets the safety standards / factors listed in 49 CFR 385.5 and 385.7.

Respectfully,

**John Lee, President
Gray Rider Truck Lines, Inc.**

JL/ppn

**Cc: Thomas L. Oliver (Carr-Allison)
Lane VanIngen (Transportation Safety Services)**

(Attachments)

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**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**GRAY RIDER TRUCK LINES, INC.
(U. S. DOT No. 280357)**

Petitioner

**Docket No. FMCSA-2003-16339
(Southern Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

This matter comes before me on a September 16, 2003, petition by Gray Rider Truck Lines, Inc. (Gray Rider or petitioner), for administrative review of a "conditional" safety rating, pursuant to 49 CFR 385.15. The conditional rating was assigned following a Compliance Review of Gray Rider completed on June 11, 2003. It became effective on August 9, 2003.

On August 18, 2003, Gray Rider filed a request under 49 CFR 385.17 for a change in safety rating based on corrective actions taken. In that request, petitioner described new procedures and actions implemented to reduce or eliminate violations of controlled substance testing requirements and acceptance of false reports of records of duty status uncovered in the compliance review. Gray Rider's request for an improved safety rating was denied by the Federal Motor Carrier Safety Administration's (FMCSA)

Southern Field Administrator on September 10, 2003. The letter of denial stated that:

The carrier's roadside profile from 5-20-2003 to 8-25-2003 documents 20 driver vehicle inspections. Six of these (30%) resulted in vehicles or drivers being placed out of service, 3 of which involved violating hours of service rules. This sample of roadside inspections does not warrant an upgrade in rating. The carrier is advised to contact the Tallahassee division office, FMCSA, to schedule a follow-up Compliance Review.

The carrier has now filed a petition for review of that denial.

Gray Rider alleges three principal errors in the Southern Field Administrator's refusal to upgrade its safety rating. First, petitioner asserts that because its vehicle out-of-service rate was not cited in the compliance review as a factor resulting in the conditional rating, it was improper to consider this rate in connection with its corrective actions. Second, Gray Rider challenges the relevance of the time period May 20 to August 25, 2003, because portions of this period predate its compliance review and the subsequent adoption of corrective actions. Finally, although the carrier concedes that three of its drivers were cited for hours-of-service violations during this period, it claims that only one was placed out-of-service, not three as stated in the September 10 letter.

Gray Rider is simply incorrect in its assertion that consideration of a request for an upgraded safety rating can only focus on the corrective actions taken by the carrier with respect to violations disclosed in the compliance review. These requests are governed by the provisions of 49 CFR 385.17. Subsection 385.17(i) states that FMCSA will notify the motor carrier in writing if it determines that the carrier "has not taken all the corrective actions required, or that its operations still fail to meet the safety standards and factors specified in [sections] 385.5 and 385.7" (emphasis added). One factor enumerated in section 385.7 is the "frequency and severity of driver/vehicle regulatory violations identified in roadside inspections." It was thus entirely appropriate for the

Field Administrator to consider the most recent three-month period of roadside inspections. The fact that the first 21 days of this period predated the compliance review does not invalidate use of the period, particularly in light of documented hours-of-service violations that took place in August and which are discussed immediately below.

Petitioner has submitted copies of four driver/vehicle inspection reports to demonstrate that certain roadside inspections cited by the Field Administrator took place before the compliance review. It also apparently believes that these documents support its assertion that only one driver was placed out-of-service for hours-of-service violations, not the three drivers indicated in the Field Administrator's letter. It is not necessary here to identify the exact number of drivers placed out-of-service.

Two of the inspection reports, one dated August 14 and one dated August 15, reveal violations of the hours-of service regulations by Gray Rider drivers. (The reports also indicate violations of vehicle safety requirements and local HOV restrictions.) I find that these two inspection reports, standing alone, are sufficient to establish substantial doubt as to the efficacy of petitioner's corrective actions. The violations occurred more than two months after the compliance review and less than one week before petitioner filed its list of corrective actions taken. The violations identified on these two reports fully warrant the Field Administrator's denial of the request for an upgraded safety rating.

The record before me thus fails to document any material error by the Field Administrator. Petitioner is again advised to contact FMCSA's Tallahassee, FL, division office to schedule a follow-up compliance review.

its conditional safety rating filed by Gray Rider Truck Lines is denied.



John H. Hill
Chief Safety Officer
Federal Motor Carrier Safety Administration

11-5-03

Date

FMCSA-2003-16339

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of November 2003, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

John Lee, President
Gray Rider Truck Lines, Inc.
P.O. Box 17415
Pensacola, FL 32522

One Copy
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FMCSA-2003-16339

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John H. Hill
Chief Safety Officer
Federal Motor Carrier Safety Administration
Attention: Steven B. Farbman
Adjudications Counsel
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Personal Delivery

U.S. DOT Dockets
U.S. Department of Transportation
400 7th Street SW, Room PL-401
Washington, DC 20590

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W-a-j-

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 SafeStat Results as of October 24, 2003
 Updated Monthly


US DOT #: 280357 MC #: 183662 Carrier Name: GRAY RIDER TRUCK LINES INC

 Other FMCSA Websites: [Select a Link](#)




Driver SEA Report


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Click on the underlined text below for an explanation of how an indicator or measure was calculated.

Click on the underlined text below for an explanation of how an indicator or measure was calculated.

Driver SEA Value: 97.93					 View
Compliance Review Results (within 18 months)		Driver Inspection Results (within 30 months)		Moving Violation Results (within 30 months)	
Measures and Indicators					
Driver Review Indicator (DRI)	93.3	Driver Inspection Indicator (DII)	97.9	Moving Violation Indicator (MVI)	
Driver Review Measure (DRM)	23.502	Driver Inspection Measure (DIM)	0.482	Moving Violation Measure (MVM)	
Summary Event Data					
Date of Review	06/11/2003	Number of Driver Inspections	116	Number of Moving Violations	
Number of Critical Violations	1	Number of OOS Inspections	25	Number of Drivers	
Number of Acute Violations	0	Number of Inspections w/OOS Order Violation	0		
		Driver OOS Rate (DOR)	0.216		
 View Detail Data		OOS Inspections		 View Detail Data	

Click on the underlined column headings to resort data records.

To view the OOS violation description click on underlined number in the Driver OOS Violations column.

Driver OOS Inspections (within 30 months)										Download
	<u>Inspection Date</u>	<u>Report State</u>	<u>Report Number</u>	<u>Inspection Level</u>	<u>Unit Description</u>	<u>VIN Number</u>	<u>Unit License Number</u>	<u>Unit License State</u>	<u>Driver Violation</u>	
1	8/25/2003	FL	0055002967	2	TRUCK TRACTOR	1FUYZYB6NH477079	409641	AL		
2	8/14/2003	TN	TBAG000352	2	TRUCK TRACTOR	K75009	409632	AL		
3	6/25/2003	MD	00FR004632	3	TRUCK TRACTOR	A65568	409635	AL		
4	5/20/2003	AL	0000341951	3	TRUCK TRACTOR	1FUYDCYB5VL861056	409612	AL		
5	5/9/2003	AL	0000324093	3	TRUCK TRACTOR	1FUYSDYB9YLB74603	312646	AL		
6	4/16/2003	ME	4944000112	1	TRUCK TRACTOR		325359	AL		
7	2/21/2003	ME	0000122532	3	STRAIGHT TRUCK		312648	AL		
8	2/20/2003	MO	H4S4000148	1	TRUCK TRACTOR	1FUJA3BG71LB74608	312651	AL		
9	2/18/2003	SD	0030020687	2	TRUCK TRACTOR	1FUJA3BG71LB74608	312651	AL		
10	1/23/2003	CT	5700000412	3	TRUCK TRACTOR	1FUJA3BG71LB74611	312654	AL		
11	1/7/2003	WV	3152000088	2	TRUCK TRACTOR	1FUJA3BG71LB74608	312651	AL		
12	10/15/2002	NC	0040001275	2	TRUCK TRACTOR	1FUJA3BG91LB74612	312655	AL		
13	9/30/2002	GA	0000425872	1	TRUCK TRACTOR	1FUYDCYB5VL861056	312640	AB		

14	9/30/2002	NJ	SPAB001884	2	TRUCK TRACTOR	75011	325261	AL
15	9/11/2002	MD	00DS003622	2	TRUCK TRACTOR	B74612	312655	AL
16	9/9/2002	IA	000P153FJM	3	TRUCK TRACTOR		312651	AL
17	7/9/2002	GA	0000409081	3	TRUCK TRACTOR	1FUYSDB5XLA65571	312661	AL
18	5/19/2002	SD	0030016935	2	TRUCK TRACTOR	1FUJA3BG91LB74612	X864659	AL
19	5/10/2002	TN	BBBA000059	2	TRUCK TRACTOR	B74606	X864653	AL
20	3/12/2002	LA	0000576400	3	TRUCK TRACTOR		X864650	AL
21	3/8/2002	FL	0530000698	2	TRUCK TRACTOR		X864659	AL
22	2/19/2002	AL	KEJC002491	2	TRUCK TRACTOR	1FUYSDB7YLB74602	X864649	AL
23	11/20/2001	MS	0033503221	3	TRUCK TRACTOR		X864653	AL
24	9/6/2001	TN	00BA003001	2	TRUCK TRACTOR	B74611	X864658	AL
25	8/14/2001	AL	IWLC002263	2	TRUCK TRACTOR	1FUYSDB4YLB74606	X864653	AL

* The moving violation indicator is based on Roadside Inspection reports. Some moving violations are reported when Roadside Inspection was performed following a traffic stop for the moving violation. These reported violations **do not** result in the issuance of a citation to the driver.

CAUTION: Please verify important data before relying on SafeStat results. Inaccurate or out-of-date normalizing data can result in SafeStat results that do not accurately reflect the motor carrier's safety status.



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